

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition

of

CHARAN CORP.

for redetermination of deficiency
of franchise tax under Article
9-A of the tax law for 1967.

Charan Corp. having filed petition for redetermination of deficiency under Article 9-A of the tax law for 1967 and a hearing having been held on June 8, 1971 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing the taxpayer was represented by Arnold Sheiffer, C.P.A., and Harvey Fenster, C.P.A., of the firm of A. Sheiffer & Company, accountants for the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated in the State of Illinois on September 28, 1956 and began doing business in New York on June 6, 1962.

(2) The business is managed and directed from New York City where the general ledgers are maintained.

(3) The taxpayer owned real property in Albany, New York; Cincinnati, Ohio; Hartford, Connecticut, and Winston Salem, North Carolina.

(4) Each of the properties was managed by a local agent, with separate employees, bank account, ledger, insurance, etc. The mortgage on each of the properties contains a clause limiting the taxpayer's liability on the mortgage to the property alone.

(5) The Hartford property was sold in 1966 on an installment basis and \$179,593 was reported as a capital gain for federal tax purposes in 1966 with the remainder of the capital gain of \$268,048 reported for federal tax purposes in 1967. A capital gain of \$48,317 on the sale of the Cincinnati property was reported for federal tax purposes in 1967.

(6) In 1966, the taxpayer included the installment capital gain of \$179,593 on the sale of the Hartford property in its Connecticut franchise tax report and computed the tax on such income on an allocated basis by use of a three-factor formula. The taxpayer did not file a 1967 Connecticut franchise tax report and the installment capital gain of \$268,048 was not taxed by Connecticut. The capital gain in 1967 on the sale of the Cincinnati property was not subject to an income or franchise tax in Ohio.

(7) The taxpayer filed New York State franchise tax reports for 1964 and 1965 and allocated its income and capital on a statutory basis using the three-factor formula.

(8) In its New York State franchise tax report for 1966 it eliminated from income the Hartford capital gain of \$179,593 and computed the tax due on allocated total capital. Capital was allocated within and without New York using the statutory three-factor method. Notice of deficiency was issued disallowing the elimination of the capital gain and computing the tax due using the statutory three-factor method. This deficiency has been paid.

(9) In its New York State franchise tax report for 1967 the remainder of the Hartford capital gain of \$268,048 and the Cincinnati capital gain of \$48,317 were excluded from income and the tax due was computed on allocated total capital. The allocation was computed by the three-factor formula. These capital gains were allocated outside New York in computing the receipts factor.

(10) On October 16, 1970, notice of deficiency for 1967 was issued by the Corporation Tax Bureau as follows:

Entire net income (before elimination of capital gains)	\$279,102.00
Business allocation per report filed	44.2%
Allocated entire net income	123,363.08
Tax at 5½%	6,784.97
Tax paid	1,719.00
Deficiency	\$ 5,065.97

(11) A timely petition for redetermination was filed requesting that separate accounting be allowed as an equitable adjustment under the provisions of Section 210.8 of Article 9-A of the tax law.

(12) Section 208.9 of Article 9-A of the tax law provides, in part:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, * * * except as hereinafter provided, and subject to any modification required * * *."

None of the exceptions or modifications in Section 208.9 provide for the exclusion of capital gains.

(13) Section 210.8 of Article 9-A of the tax law provides, in part:

"If it shall appear to the tax commission that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the state, the tax commission shall be authorized in its discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, * * *, (c) excluding one or more assets in computing such allocation percentage, * * *, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state, * * *."

The State Tax Commission hereby

DECIDES:

(A) The notice of deficiency for 1967 issued on October 16, 1970 properly reflects the tax due by the three-factor statutory formula.

(B) Since the capital gains of \$268,048 and \$48,317 were not taxed in their entirety by the respective States in which the property sold was located, there is no inequity in applying the three-factor statutory formula.

(C) The notice of deficiency for 1967 is affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 22nd day of October 1971.

STATE TAX COMMISSION



President



Commissioner



Commissioner